

U.S. District Judge Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. CHARLES ROLAND CHEATHAM, et al., Defendants.	NO. CR18-131RAJ UNITED STATES MOTION FOR ENTRY OF AN AMENDED COMPLEX CASE MANAGEMENT ORDER
UNITED STATES OF AMERICA, Plaintiff, v. MICHAEL SCOTT MORGAN, et al., Defendants.	NO. CR18-132RAJ

1 UNITED STATES OF AMERICA,

NO. CR18-161RAJ

2 Plaintiff,

3 v.

4 JIHAD ZEIGLER,

5 Defendant.

6 7 8 I. INTRODUCTION

9
10 These related cases came before the Court for a status conference and motion
11 hearing on February 22, 2019, including a hearing on motions to continue the trial date
12 filed by multiple defendants. The Court granted those motions and set a new trial date of
13 September 9, 2019. In the orders continuing the trial dates, the Court directed the parties
14 to confer as to the entry of an amended complex case management order.

15 The parties have done so. The government has circulated a draft proposed order to
16 all of the parties that is based upon, but varies somewhat, from the Court's draft that was
17 provided to the parties at the hearing on February 22, 2019.

18 A copy of the government's proposed order is submitted herewith. The
19 government asks that the Court enter this proposed order as is.

20 The government has heard back from most (but not all) of defense counsel
21 remaining in this case. Having concluded those consultations, the government believes
22 there is a broad consensus as to *most* of the new deadlines proposed by the government,
23 but not uniform agreement. For example, almost all parties agreed to later deadlines for
24 exchange of transcripts, expert disclosures, and the like than proposed by the Court, and
25 the proposed order reflects that consensus.

26 27 28 II. AREAS OF DISAGREEMENT.

U.S. Motion for Entry of Amended Case Management Order - 2
U.S. v. *Cheatham, et al.*, CR18-131RAJ; U.S. v. *Morgan, et al.*, CR18-132RAJ;
U.S. v. *Zeigler*, CR18-161RAJ

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Disclosure of Witness Lists and Jencks/Giglio as to Cooperating

Defendants/Confidential Sources. There does appear to be some dispute as to the appropriate date for the government to produce a witness list, and also produce *Jencks* Act material and *Giglio* impeachment material as to potential government cooperating defendant witnesses and/or confidential source witnesses (if any). As the Court may recall, in the last order entered by the Court, the deadline for witness lists and *Jencks/Giglio* material for these types of witnesses was ten days before trial. Now that the trial has been continued, some (but not all) defense counsel have asked that the government be ordered to produce a witness list and *Jencks/Giglio* material as to this category of witnesses as early as late July or early August.

The government opposes an earlier deadline for four reasons. *First*, as the Court is well aware, the standard practice in this District has long been for the government to produce this type of material between a week and ten days before trial. There is no reason to deviate from this standard practice in this matter; indeed, as set forth below, the record strongly shows that the Court should adhere to it.

Second, the parties previously agreed on a deadline of ten days before trial for the disclosure of this material. That trial date has since been continued at the defense request – a request the government did not join, but also did not oppose. However, the mere fact that some defense counsel felt they needed more time to prepare for trial does not give rise to a right to revisit other deadlines previously agreed to by the parties. Obtaining a continuance of the trial date is not grounds to obtain some other unrelated advantage.

Third, the early cooperator/CS discovery sought by the defense is contrary to law. Local Criminal Rule 16(b) permits the government to decline to provide the names of witnesses if that declination is in the interests of justice. As discussed below, there is a significant risk of witness intimidation and obstruction in this matter. In addition, Rule 16(c) provides that witness statements may be provided at trial per the *Jencks* act, 18 U.S.C. § 3500, or “at any time the parties agree.”

1 To be clear, the government is not proposing to withhold this information
 2 altogether. It is prepared to provide *Jencks/Giglio/Henthorn* disclosures as to its law
 3 enforcement witnesses *a full month before trial*. It is also prepared to provide the
 4 equivalent disclosures as to the limited list of potential witnesses for whom the
 5 government has security concerns ten days before trial. However, there is no sound legal
 6 ground to compel the government to do so earlier.

7 *Fourth*, and most important, the government has significant and heightened
 8 witness security concerns in this case. As set forth in prior briefing, a number of
 9 defendants in this matter are alleged to have ties to local street gangs, and the government
 10 intercepted calls where gang-related violent incidents were discussed. More recently, the
 11 government has learned about specific incidents involving threats and attempted witness
 12 intimidation in this matter. Significantly, some of that information *comes from counsel*
 13 *for some of the charged defendants*, who have alleged that their clients have received
 14 threats based on a belief that the defendants in question were cooperating. The
 15 government has also seen social media postings containing threats and speculation as to
 16 who may be “snitching” in this matter. As such, premature disclosure of who may be
 17 cooperating and/or who acted as a CS in this matter poses an unacceptable risk of
 18 intimidation – or worse – to government witnesses.

19 **Deadline for Motions in Limine:** A number of defense counsel have also
 20 proposed a later deadline for motions in limine, with August 8 being one concrete
 21 proposal. The government interpreted the Court’s comments at the February 22 hearing
 22 as a strong expression of the Court preference to avoid last minute motions. As such, the
 23 government has left the Court’s July 26 deadline in place in its draft. However, the
 24 government would not object to a later deadline for motions in limine if the Court finds
 25 that acceptable, and defers to the court on that issue.

26 **III. CONCLUSION**

1 For the reasons set forth above, the government respectfully submits that the Court
2 should enter the Amended Complex Case Management Order proposed by the
3 government, and overrule any requests to order the government to produce (in particular)
4 information pertaining to cooperating defendants and/or confidential sources that may
5 tend to disclose their identity earlier than set forth therein.

6 Dated this 1st day of March, 2019.

7 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/Karen Wolgamuth

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